

1 IN THE UNITED STATES DISTRICT COURT

2 MIDDLE DISTRICT OF NORTH CAROLINA

3 UNITED STATES OF AMERICA )  
4 ) Case No. 1:10CR71-1  
5 vs. ) Greensboro, North Carolina  
6 DARIUS TREMAYNE BROOKS, )  
7 ) January 19, 2011  
8 ) 9:47 a.m.  
9 Defendant. )  
10 )

11 TRANSCRIPT OF SENTENCE

12 BEFORE THE HONORABLE WILLIAM L. OSTEEEN, JR.

13 UNITED STATES DISTRICT JUDGE

14 APPEARANCES:

15 For the Government: SANDRA HAIRSTON, AUSA  
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17 For the Defendant: JOHN A. DUSENBURY, AFDP  
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23  
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1 Greensboro, North Carolina

2 January 19, 2011

3 (At 9:47 a.m., proceedings commenced.)

4 THE COURT: All right. Ms. Hairston?

5 MS. HAIRSTON: Yes, Your Honor, good morning.

6 Your Honor, the next case will be the United States of  
7 America versus Darius Tremayne Brooks, Case No. 1:10CR71-1.  
8 Mr. Brooks is represented by John Dusenbury. The case is  
9 called for sentencing.

10 THE COURT: Good morning, Mr. Dusenbury.

11 MR. DUSENBURY: Good morning, Your Honor.

12 THE COURT: Are you and Mr. Brooks ready to  
13 proceed with this hearing?

14 MR. DUSENBURY: We are.

15 THE COURT: Have you received a copy of the  
16 presentence report and reviewed it with Mr. Brooks?

17 MR. DUSENBURY: Yes, I have, Your Honor.

18 THE COURT: Are there any objections?

19 MR. DUSENBURY: Your Honor, we don't have any  
20 unresolved objections. However, there is just one minor  
21 factual correction that really doesn't have a direct bearing  
22 on the guidelines that Mr. Brooks asked me to bring to the  
23 Court's attention.

24 It is in paragraph 36, probably the third from the  
25 last sentence says, "The defendant provides no support and

1 has no type of relationship with his son." He asked me to  
2 inform the Court that he indeed does have a relationship  
3 with that child. In fact, when he was -- Mr. Brooks --  
4 before he was incarcerated, he regularly kept his son on  
5 weekends. It's true he was not paying child support as  
6 such, but he was -- he does have a relationship with his  
7 son. That is a factor that I envisioned as having some  
8 significance under the 3553 factors.

9 THE COURT: All right. Ms. Hairston, any  
10 objection to me considering that?

11 MS. HAIRSTON: No, Your Honor.

12 THE COURT: All right. I'll take that -- I'll  
13 note that, Mr. Dusenbury. Any further matters in relation  
14 to the presentence report?

15 MR. DUSENBURY: No, sir.

16 THE COURT: All right. Mr. Brooks, do you agree  
17 with Mr. Dusenbury; that is, first of all, you have reviewed  
18 the presentence report, is that correct?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: And do you agree that with that one  
21 relatively minor change, there are no objections, is that  
22 correct?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: All right. You may have a seat,  
25 Mr. Brooks.

1 I will find in Mr. Brooks' case that -- I will  
2 adopt the presentence investigation report without change.  
3 Mr. Brooks' offense of conviction, that is, the 922(g)  
4 offense, does not carry a mandatory minimum sentence. The  
5 resulting advisory guideline calculation is as follows:

6 A total offense level of 25.

7 A criminal history category of IV.

8 A guideline imprisonment range of 84 to 105  
9 months.

10 A supervised release range of two to three years.

11 A fine range of 10,000 to \$100,000.

12 A special assessment of \$100 is mandatory.

13 Mr. Dusenbury, will there be any additional  
14 evidence on behalf of Mr. Brooks?

15 MR. DUSENBURY: No evidence, Your Honor.

16 THE COURT: Then I will hear from you at this time  
17 as to what constitutes a sentence that is sufficient but not  
18 greater than necessary taking into consideration the  
19 advisory guideline calculation as well as all other factors  
20 set forth under 18 USC Section 3553.

21 MR. DUSENBURY: Thank you, Your Honor. At the  
22 outset, I would like to point out, Your Honor, that  
23 Mr. Brooks' grandmother and his cousin are also present  
24 today.

25 THE COURT: Thank you both for taking the time to

1     come here today.

2                 MR. DUSENBURY: Your Honor, I certainly have some  
3     very specific points I would like to make, but I'm thinking  
4     that the Court may well have specific questions or concerns  
5     that maybe my remarks might not get to as readily as could  
6     be accomplished. If there were particular things --

7                 THE COURT: I'll ask them as you go along,  
8     Mr. Dusenbury.

9                 MR. DUSENBURY: All right, sir. Your Honor,  
10    having in mind the mandate of 3553 -- and I was thinking  
11    specifically about the notion -- the concept of sufficiency,  
12    sufficiency of the sentence without being excessive.

13                It seems to me that whole idea of sufficiency is  
14    informed largely by perspective, and just no matter how  
15    accurate a presentence report is, the limitations of time,  
16    space, and investigative resources just limit the  
17    perspective, and I think that's particularly true with  
18    Mr. Brooks' case for this reason. Simply, reading the  
19    presentence report in its entirety, offense conduct and  
20    historical information taken together, one could easily come  
21    away with the conclusion that this was nothing more than a  
22    premeditated armed robbery of Mr. Brooks's cousin and her  
23    boyfriend for --

24                THE COURT: I would say that more likely  
25    premeditated armed robbery of the boyfriend, and the cousin

1 happened to show up.

2 MR. DUSENBURY: Yes, sir. Well, that's what the  
3 Court -- that was one of the points that I wanted to make.

4 Your Honor, but even more than that I think is  
5 this -- and that is accurate as far as it goes. My  
6 contention is it just doesn't go far enough, because some of  
7 the most -- the facts that lend the greatest perspective are  
8 the facts that may lie between the facts set forth in the  
9 report.

10 For example, one is the relationship between  
11 Mr. Brooks -- of what the relationship was at the time of  
12 the offense between Mr. Brooks and Mr. Taylor, his  
13 codefendant. Mr. Brooks, who is now 21 years old, was 19 at  
14 the time. Mr. Taylor was at that time was around 23, or  
15 early twenties, 22, 23, 24, somewhere around there. Taylor  
16 had by that time become something of a street mentor to  
17 Mr. Brooks, a mentorship that, you know, is very easily  
18 understood in retrospect because Mr. Brooks, at age 10 -- in  
19 that year he lost both his mother, who, despite her problems  
20 with substances, loved him dearly. And I guess as he looks  
21 back on it, he realizes she may be one of the few people  
22 that he's come in contact with in his life who actually  
23 loved him unconditionally, despite her problems. And he  
24 also lost his father who was sent to federal prison when he  
25 was 10 years old.

1           And from that time until now, he actually has been  
2 bounced around from household to household. And it's  
3 fortunate that he had relatives who were willing to take him  
4 in; but he pointed out to me that, you know, even if you're  
5 in the household of an uncle or an aunt and their cousins --  
6 you're surrounded by cousins who are more or less your same  
7 age, that you are -- there is -- there is still a palpable  
8 void. I mean, you're still an outsider, notwithstanding the  
9 best intentions. I'm sure we all know that children can be  
10 fairly cruel to each other, and those things had an impact  
11 on him.

12           Now, I'm talking about -- I've alluded to  
13 Mr. Taylor's mentorship. Well, it's not like that was a  
14 mentorship that was imposed on Mr. Brooks. Mr. Brooks chose  
15 that mentor. But that was a choice made at 16, 17, 18 years  
16 old after really not having had the -- a man in his life to  
17 mentor him or instruct him or guide him or provide an  
18 example of what manhood looks like when directed along the  
19 proper path.

20           As the presentence report reflects, his father,  
21 who apparently the mentorship offered while Mr. Brooks's  
22 mother and father were in the same household had to do --  
23 was mostly drug abuse and violence. That was what he was --  
24 that was what was implanted in his subconscious as a young  
25 boy. And so that --

1           THE COURT: I meant to ask you. In paragraph 35,  
2 according to the defendant's father in his presentence  
3 report, Valencia Brooks was addicted to cocaine base and  
4 died of an aneurysm in July of 2000. The defendant  
5 described his relationship with Ms. Brooks as one centered  
6 around smoking crack and violence, but she -- does that mean  
7 he, that is, your client, the defendant, was the one saying  
8 that his relationship was centered around smoking crack and  
9 violence or the defendant's father?

10           MR. DUSENBURY: I took it to mean the latter, Your  
11 Honor.

12           PROBATION AGENT: I can clarify that, Your Honor.  
13 I caught that this morning. That was Mr. Perkins'  
14 statement.

15           THE COURT: Okay. So it's the -- okay. Thank  
16 you. I caught that the first time. Something you said  
17 reminded me I wasn't sure about that. All right. You may  
18 go ahead.

19           MR. DUSENBURY: So -- and I was just alluding,  
20 Your Honor, to what I think are some significant historical  
21 facts that led to Mr. Brooks being where he was on this day.

22           Another fact that I think is relative to the  
23 perspective that we're talking about, Your Honor, is not  
24 that it -- it certainly doesn't excuse the crime, it may not  
25 even mitigate the crime significantly, but that is the fact



1 that Mr. Shuff -- who, by the way, is now deceased, he was  
2 killed -- was at that time a drug dealer. Mr. Brooks  
3 obviously knew that his cousin dated Shuff, but another one  
4 of these facts that I'm alluding to, Your Honor, is actually  
5 something that Mr. Brooks just recently shared with me. I  
6 didn't know this at the time of change of plea.

7 But as -- and that was a conversation between  
8 himself and Taylor just before the robbery occurred, because  
9 Mr. Brooks knew that his cousin lived at this residence.  
10 And he told Taylor, look, if my cousin's there, I'm not  
11 going through with this. He at least appreciated the  
12 possibility that what they were about to do could have some  
13 terrible negative ramifications for his cousin whom he loved  
14 very, very much. And when -- after staking the place out  
15 for about 20 minutes or so, they realized that the cousin  
16 was not at home, which she later confirmed in her statement  
17 to police. She and her mother had been to Wal-Mart. In  
18 fact, the cousin reported --

19 THE COURT: What do you think -- what do you think  
20 then contributes to the decision, the conscious decision, of  
21 if my cousin is here, I'm not going to participate in the  
22 robbery. Then when the cousin shows up, instead of running,  
23 instead of leaving, they put a gun to the cousin -- one puts  
24 a gun to the cousin's head.

25 MR. DUSENBURY: Yes, sir.

1           THE COURT: And then one or both tie the cousin up  
2 and put her in the closet.

3           MR. DUSENBURY: Yes, sir.

4           THE COURT: How do we go from "If she's there,  
5 we're not going to do this," to, "Well, now she's here,  
6 let's tie her up, and put her in the closet."

7           MR. DUSENBURY: I think it's panic. I think --

8           THE COURT: Why would you panic that way instead  
9 of running?

10          MR. DUSENBURY: And, Judge, of course, that is the  
11 question, and that question is unanswerable, I would  
12 contend. You know, because there's so many of the  
13 unfortunate choices that probably all of us have made in our  
14 life that looking back on we ask that same question: why did  
15 I do this rather than do that? Fortunately --

16          THE COURT: We definitely -- everybody in this  
17 courtroom, I'm sure, asks that question about a number of  
18 decisions they've made.

19          MR. DUSENBURY: Yes, sir.

20          THE COURT: But I doubt -- I don't -- nobody's  
21 made a decision like this. Let me put it in perspective.

22                 As I listened to you talk, Mr. Dusenbury, I was  
23 thinking about an article I read a while back and -- the  
24 crime that I was reading about has got nothing to do with  
25 this case. But it was in a terrorism case, and there was

1    apparently some indication that the defendant was going to  
2    claim the defense of entrapment which would then lead to  
3    whether or not the Government could prove that the defendant  
4    was predisposed to it.  It was all speculative.

5                But the writer of this article raised a point,  
6    which is, how do you -- what normal American citizen would  
7    you ever believe was predisposed to commit a terrorist act  
8    or not commit a terrorist act?  In other words, what they  
9    were saying was nobody that we know of normal in society  
10   walks around thinking about or is predisposed toward  
11   committing a terrorist act.  It just goes beyond the pale.  
12   Do you understand what I'm saying so far --

13               MR. DUSENBURY:  I think so.

14               THE COURT:  -- or follow what I'm saying so far?  
15   And to a certain degree, sometimes I look at these  
16   robberies, and I can't understand how they progress in the  
17   manner which they do.

18               Now, even without your comments, it is clear -- I  
19   mean, in paragraph 7, "While she was in the closet, she  
20   heard a man come to the closet door several times and say,  
21   Renee, I love you, and I love Kwami.  Renee Martin  
22   recognized the voice as belonging to Damian Levonne Taylor."

23               And so you look at -- I look at this situation,  
24   and it really defies explanation to tie somebody up, put  
25   them in the closet, kidnap them, do all these things to them

1 at gunpoint and then turn around and make these comments  
2 that, it seems to me, clearly are going to disclose who you  
3 are; and, second, just are completely -- I don't know any  
4 other way to say it other than just crazy in the middle of a  
5 robbery. It just doesn't make any sense at all.

6 But it's not my duty to understand it. One of my  
7 responsibilities is to decide what sentence is sufficient  
8 but not greater than necessary to protect the public from  
9 further crimes of the defendant. So when I'm confronted  
10 with an offense like this, even if I look at it and say the  
11 defendant had no structure, no advantage, no family  
12 structure, just really nothing during the course of their  
13 childhood, and that makes the crime at least in some  
14 respects understandable, no structure, this is where  
15 Mr. Brooks ended up. But on the other hand, I've got to  
16 decide what's necessary to make sure that Mr. Brooks doesn't  
17 do this again.

18 So how do I lay a logic yard stick against this  
19 type of conduct and say, oh, well, 84 months is enough or  
20 105 months is enough or 120 months is enough, if part of my  
21 responsibilities is to protect the public no matter how  
22 understandable the end result of Mr. Brooks' commission of  
23 this offense may be?

24 MR. DUSENBURY: Well, Your Honor, I would say  
25 this. First, I think that perhaps we may look amiss if we

1 look for logic where it really doesn't exist, because I  
2 agree with the Court, there is no logical explanation to the  
3 conduct -- the contradictory conduct that we're talking  
4 about. But I disagree with the Court in terms of a duty to  
5 understand, because I think it's -- I think it is -- it's  
6 not logical, but it is understandable. I think --

7 THE COURT: Well, let me back up. I admit I see a  
8 lot of things that I realize I will never understand, and I  
9 accept that. But I do have a responsibility to come to some  
10 understanding of what sentence is sufficient but not greater  
11 than necessary to achieve these factors set out under 3553,  
12 one of which is to protect the public from further crimes of  
13 the defendant and to provide adequate deterrence --

14 MR. DUSENBURY: Absolutely.

15 THE COURT: -- to criminal conduct, two of which  
16 are. So how do I take that kind of logical factor or those  
17 rational factors and apply them to something like this in  
18 this case?

19 MR. DUSENBURY: Your Honor, I think we do that or  
20 at least we approach that by trying to glean -- since one of  
21 the other factors that the Court has to weigh in fashioning  
22 the sentence is the history of the defendant -- trying to  
23 glean to the extent that we can, and even though, granted --

24 THE COURT: Does his history suggest a lesser  
25 sentence or a greater sentence?

1           MR. DUSENBURY: Well, for the reasons that I'm  
2 probably not doing a good job of articulating, I think a  
3 lower sentence for this reason. Because I think there is a  
4 duty to at least attempt to understand what was going  
5 through his mind at the time, even as it relates to this  
6 conduct that is inexplicable logically, because that, more  
7 than anything else -- more than the result of this crime,  
8 the thing that informs the extent to which the public needs  
9 to be protected from this man is what's going on inside him.  
10 And, granted, I mean, none of us can know that, but I think  
11 there are clues that suggest why he did the thing that  
12 caused him to be here today. And maybe even -- certainly  
13 imperfectly, and probably more imperfectly what he's likely  
14 to do in the future. But as imperfect as those indicators  
15 are, I think we still have a duty to at least look at them.

16           And going back to the Court's original point about  
17 the article that you read about the terrorist. The parallel  
18 I see here, Your Honor, is that one person's terrorism is  
19 another person's heroism. Nobody sets out to be a  
20 terrorist, but a number of people set out to be heroes; and  
21 because of some warped thinking, they come to a place where  
22 they perceive the conduct that normal people would regard as  
23 antisocial as heroic. That, I think, is the explanation.

24           Your Honor, for whatever reason I'm reminded of a  
25 scene in the movie Training Day. Did the Court happen to

1 see that movie?

2 THE COURT: Many times.

3 MR. DUSENBURY: All right. Well, it's the scene  
4 where Denzel Washington's partner is abandoned in the  
5 apartment of these Hispanic drug dealers who are about to  
6 kill him. At the end of that scene when the leader of that  
7 group discovers that this guy had been instrumental in  
8 helping his young cousin, and they're about to let him go,  
9 he says, look, it was nothing personal. You know, I was  
10 about to blow your head off with a shotgun in the bathtub,  
11 but it was nothing personal. Now, none of us can really get  
12 our minds around that kind of thinking, but that is the  
13 kind -- they regarded murder as just business. It's nothing  
14 personal, it's just business.

15 It's something on -- something like that kind of  
16 thinking, I think, Your Honor, is common. Not uncommon.  
17 It's common to people who think that it's a good idea to rob  
18 any -- another person, whether it's a drug dealer or not.  
19 They come to a place -- nobody starts off thinking that way,  
20 but as a result of experiences and influences and examples  
21 and decisions. It's not just stuff that happens to us, it's  
22 stuff that we decide -- the way we decide to deal with stuff  
23 that happens to us. We know people have come through  
24 situations like what Mr. Brooks has experienced and make  
25 totally different choices. We know that.

1           But I think it's a function of -- it's a function  
2 of, again, the term the totality of the circumstances or  
3 really the totality of the influences that inform the  
4 choices that cause someone to think that, okay, this isn't  
5 personal. I'm robbing this guy for business reasons, but at  
6 least I'm being principled enough to say that if my cousin  
7 is there, I'm not going through with it. And then to be  
8 surprised by the cousin, to act in the way they acted, I  
9 think, is -- the only explanation is panic.

10           THE COURT: Okay. And if I accept all that and  
11 the reasons that Mr. Brooks got to where he was, then tell  
12 me what I should do in terms of a sentence when someone has  
13 gotten to the point where they can make the business  
14 decision that Mr. Brooks and his partner made in committing  
15 this robbery. Does that mean a lower sentence is enough?  
16 Does that mean higher? What --

17           MR. DUSENBURY: Yes, sir.

18           THE COURT: Within the parameters of 922(g), what  
19 do you think I should do?

20           MR. DUSENBURY: I think a sentence of seven years,  
21 which is about -- no, it's exactly one-third of the -- of  
22 his life to date, which happens to be the low end of the  
23 guideline range, is sufficient without being excessive under  
24 3553 for a number of reasons.

25           He has already been incarcerated 19 months,



1 granted, in state custody, for this conduct. None of that  
2 time will count toward his federal sentence. It's virtually  
3 certain that the state -- in fact, he has a trial date of  
4 March, I think, the 4th on his state charges, the robbery,  
5 etc., arising from the same conduct.

6           So no -- not -- I have no idea what's going to  
7 happen there. Chances are he'll be convicted. So he will  
8 get some additional time in addition to the 19 months that  
9 he's already served. I understand different jurisdiction,  
10 different crime, but same conduct.

11           He has never been incarcerated before now. He's  
12 not -- not only -- the longest sentence that he's previously  
13 served is a sentence that he's serving now awaiting  
14 disposition of these charges, both federally and state.  
15 Seven years added to what he's already facing, given what  
16 he's done in the past, Your Honor, is in my opinion  
17 sufficient.

18           There's one other factor, again, one of these  
19 interstitial facts that I think is significant. The common  
20 law robbery offense, it's accurate as far as it goes, but  
21 what it doesn't report, Your Honor, is that that incident  
22 involved at least four other, maybe -- four or five other  
23 individuals, and the gentlemen, the victim -- and it arose  
24 because the victim had, at least in the view of Mr. Brooks  
25 and some of his cohorts, had been perhaps inappropriately

1 friendly with different girlfriends, a girl Mr. Brooks was  
2 interested in at the time, a girl that one of the other  
3 gentleman was interested in at the time, and this was just a  
4 fight. Four or five guys jumped on this one guy, beat him  
5 up, and, oddly enough Mr. Brooks neither got the money nor  
6 the amplifier.

7 But it doesn't change what occurred, that he was,  
8 in fact, charged with that offense, that he was convicted of  
9 that offense, that he engaged in the conduct. It's just  
10 that in the absence of a context, it looks like what we have  
11 here, that is, in our case, is nothing more than a  
12 continuation of a pattern that he started maybe a few months  
13 early, and it's not really. This is on an order of  
14 magnitude that's different from anything that he had done in  
15 his past, including the common law robbery.

16 All those factors taken together, I guess you can  
17 lump that under the history and characteristics of the  
18 defendant, from the family -- and the last thing, Judge,  
19 I'll mention is this, because I am going to ask the Court to  
20 recommend a Bureau of Prisons placement -- a designation of  
21 FCI Butner. But -- as the report indicates, his father is  
22 at FCI Butner, and he told me just yesterday, I think it  
23 was, that while he's not had any -- his father has not  
24 offered to be a mentor to him, a main -- who knows what the  
25 reasons are, until just recently when -- and Mr. Brooks told

1 me that his father has communicated with him and said, look,  
2 if you can get to Butner, I'll look out for you. You know,  
3 I've got -- and if I'm no longer here, there are people here  
4 who care about me who will take care of you. It's just -- I  
5 just -- the irony of that, it's just overwhelming that now  
6 in -- as an incarcerated person, the father is now offering  
7 mentorship.

8           Well, I think it is what it is. But for all of  
9 those reasons, Your Honor, the sentence that I contend to be  
10 sufficient without being excessive is the sentence of seven  
11 years for all the reasons that I just mentioned. Thank you.

12           THE COURT: All right. Thank you, Mr. Dusenbury.  
13 Ms. Hairston, does the Government wish to be heard?

14           MS. HAIRSTON: Your Honor, I'll be honest. I  
15 don't quite know what to say, but I am going to say a couple  
16 of things.

17           Right versus wrong. He knows right versus wrong.  
18 That's the first thing I'm going to say. It's as simple as  
19 that. A lot of us have suffered through the loss of a  
20 parent as a young child. I'm one of those people. Now, my  
21 parents were not drug addicts, and they didn't commit  
22 crimes. But we all have a story, and we all are responsible  
23 for what we choose to do with the hand we're dealt. He was  
24 dealt a bad hand, but he knows right from wrong.

25           And to argue to this Court that it's nothing

1 personal, it's just business, that I'm going to rob somebody  
2 knowing full well that it's his cousin's house, and he still  
3 went there. He still went. He cannot sit here at 21 years  
4 old or 19, the age he was when this happened, and try to  
5 blame that on somebody else. He made that decision.

6 Yes, he had a bad childhood, and that's a terrible  
7 thing, and I'm not saying that this Court should not  
8 consider that, but not for a low end sentence, not when you  
9 knowingly go into somebody's house and put a gun to  
10 somebody's head, tie them up, and try to rob them just  
11 because they're a drug dealer, and you put another innocent  
12 person at risk. And she apparently has a child. What if  
13 the child had been there? Was there ever going to be a  
14 point where this was going to turn out right? No. There  
15 was never going to be a point where this was going to turn  
16 out right. So whether he thinks it's personal or not, it  
17 was personal. It was clearly personal.

18 And the other thing I'll say, Your Honor, is,  
19 quite frankly, in my opinion 120 months would be the  
20 sentence to impose in this case. I know the Court's not  
21 going to do that, but I just think Mr. Brooks needs to think  
22 about this. He needs to understand that he has some  
23 personal responsibility here. All aside from what he grew  
24 up with as a child, he has to at some point take  
25 responsibility for himself.

1           He left that crime and went on a school ground  
2 with a gun, a loaded gun in his pocket with a round in the  
3 chamber, around other people. What was he going to do  
4 there? If somebody looked at him the wrong way or if  
5 somebody looked at his girlfriend the wrong way there, what  
6 was he going to do then?

7           Right versus wrong, Your Honor. That's all I'm  
8 saying. He knows right versus wrong.

9           THE COURT: I don't know that it makes a lot of  
10 difference, but I'm not sure whether -- initially, when I  
11 read the report, I wasn't sure but what that wasn't a school  
12 function. But now I gather rereading it that it was July 4,  
13 and people had gone to Eden Morehead to watch the fireworks.

14          MS. HAIRSTON: Yes, sir.

15          THE COURT: Not that that -- I think it would be  
16 significantly different if the firearm was on school grounds  
17 while school was in session.

18          MS. HAIRSTON: Yes, sir.

19          THE COURT: Not that it otherwise mitigates it  
20 all, but it did -- the way I finally understood it was that  
21 that was just gathering at night to watch the fireworks at  
22 that Eden Morehead High School.

23          MS. HAIRSTON: And on that particular occasion,  
24 Your Honor, when you've got a holiday where there are people  
25 in a festive mood who may or may not be in one state of

1 intoxication or another, it's ripe for something to happen,  
2 whether he intended for it or not. And I'm not saying he  
3 went there to hurt anybody. I'm simply saying it's another  
4 instance, Your Honor, in a chain of decisions of choosing  
5 between right and wrong.

6           And it's clear to me that he knows the difference  
7 between right and wrong, because if he made the statement  
8 about my cousin being there, and I'm not going to go through  
9 with it, he knows the difference between right and wrong.  
10 Don't go there to do it to begin with. Make that choice.  
11 So he has a responsibility to himself, to his family, to  
12 those children that he has to learn to make the decision --  
13 the right decision as opposed to the wrong decision.

14           And let me just say this about going to Butner.  
15 I'd ask the Court to deny that request, because I can't see  
16 any benefit coming from that; and whatever his father means  
17 by saying he'll look out for him or have somebody look out  
18 for him, no good's going to come from that.

19           THE COURT: I can understand the request, but I  
20 agree with Ms. Hairston on that one. I think to make that  
21 recommendation unfairly impinges on the Bureau of Prisons'  
22 responsibility to make its own security risks and  
23 assessments, and I can see -- I could see why Mr. Brooks  
24 would want to go there, but I can also see where the Bureau  
25 of Prisons might say if we start housing family members of

1 various types of criminal activity together, that presents  
2 its own special risks in terms of alignments and  
3 associations. So I'm going to decline to do that. I'll let  
4 the Bureau of Prisons decide that on their own.

5 All right. Mr. Brooks, you are not required to  
6 say anything. If you choose to remain silent, your silence  
7 will not be held against you in any way whatsoever, but you  
8 do have the right to address the Court before any sentence  
9 is imposed; and if you wish to address the Court, now is the  
10 appropriate time.

11 THE DEFENDANT: Yes, sir. I want to say that I  
12 know -- I'm not trying to put no blame on nobody else for my  
13 actions. I know what I did was wrong, you know what I'm  
14 saying. But -- and, yeah, you know what I'm saying, I can  
15 make my own decisions. But at that time I felt like that's  
16 the only thing I knew how to do, you know what I'm saying.  
17 I've got kids to take care of. Like she said, that's my  
18 responsibility. People got responsibility. Some people  
19 don't go about it the right way, the legal way. I went by  
20 what I knew. So -- I've got to catch myself. I'm getting  
21 upset.

22 THE COURT: You went by what you knew. What was  
23 it that you knew?

24 THE DEFENDANT: Like all the wrong things. I'm  
25 not going to sit here and lie. I know what I did was wrong,

1 but I felt like -- she said I need time to think about what  
2 I've done. I feel like seven years is enough time to better  
3 myself. I'm willing to better myself. I always have. But  
4 I messed up my school years, and I felt like I never had  
5 another opportunity. I never had nobody to take me in and  
6 show me things. My grandma kept me, but my papa can't teach  
7 me how to go out and be a man --

8 THE COURT: You have a half-brother or stepbrother  
9 who is in the Air Force. You lived with him for a while.

10 THE DEFENDANT: You're right, Your Honor. But  
11 like I said, that was when I was in school.

12 THE COURT: And I assume --

13 THE DEFENDANT: I messed that life up. That's  
14 what I'm saying, I understand.

15 THE COURT: I assumed from what I read that your  
16 half-brother -- he sounded like he was a very solid  
17 individual. Maybe it was good for -- maybe it was good,  
18 maybe it was bad, I don't know. But he certainly didn't  
19 sound like he would have been showing you robberies and  
20 other illegal ways to make money. And then you've got your  
21 grandmother seated back there, and I suspect that your  
22 grandmother wasn't teaching you illegal ways to make money  
23 like robberies.

24 So where did you acquire this knowledge of  
25 committing robberies to get money for your children? Where



1 did that knowledge come from?

2 THE DEFENDANT: Growing up from, you know what I'm  
3 saying, living with my mother and my father. I saw my  
4 daddy -- I'm not just talking about robberies. When I say  
5 illegal things, I'm -- drugs, selling drugs. I'm talking  
6 about that, too. That's what I saw. That's how I saw money  
7 coming in. I never had nobody teach me how to fix cars or  
8 paint houses.

9 THE COURT: Who taught you how to commit a  
10 robbery?

11 THE DEFENDANT: I mean, nobody had to teach me  
12 how. I mean, you know what I'm saying, anybody can, you  
13 know what I'm saying. But that's not the point. I don't  
14 want to get deep into that. I know what I did was --

15 THE COURT: I'm responding to what you said,  
16 Mr. Brooks, because you said you were doing what you knew  
17 how to do; and you didn't know how to do these legal things,  
18 so you chose to do the things you knew how to do.

19 THE DEFENDANT: I was around the wrong people, the  
20 wrong set of people. You hang around the wrong people  
21 that's doing the same thing that you grew up -- you know  
22 what I'm saying, you grew up around, you know what I'm  
23 saying, selling drugs. Eventually, it brushes off on you,  
24 and you watch them, and you eventually pick up on it, you  
25 know what I'm saying.

1           But anybody -- anybody take you out and show you  
2 how to sell a rock or sell a blunt or make some quick money.  
3 But it's not going to be just anybody that shows you how to  
4 do things. I messed up with my own family at a young age,  
5 and I dug myself in a deep hole where I couldn't get out of  
6 it. But, I mean, I'm learning from my mistakes right now.  
7 This is my first time being in this situation.

8           I feel like if -- I feel like when I do go to  
9 prison, I do want to take trades and better myself so I know  
10 then me knowing more I'll have a chance when I come home.  
11 But at the same time I feel like my kids need my -- I've got  
12 family like everybody else, and I know seven years from now  
13 I'll have all kind of trades, something I didn't have before  
14 I went in.

15           Even if I get 105 months, it's still -- it's  
16 still -- that's just longer away from my family. Nothing is  
17 going to change. I will still go home. I just ask that you  
18 find it in your heart to understand me. I know my wrong.  
19 I'm admitting to my wrong. Just give me a chance to be home  
20 with my family so I can do right.

21           THE COURT: And how many years did you go to Eden  
22 Morehead High School, two years?

23           THE DEFENDANT: Yes, sir.

24           THE COURT: And what classes did you take, do you  
25 remember?

1           THE DEFENDANT: When I was in Morehead High  
2 School, they never gave me a chance to take regular classes.  
3 I was in behavior classes.

4           THE COURT: All right. Who were your teachers?

5           THE DEFENDANT: I can't remember their names.

6           THE COURT: Did you have one that you liked better  
7 than others?

8           THE DEFENDANT: Yeah, I did.

9           THE COURT: Who was that? Can you remember? Was  
10 it a man or a woman?

11          THE DEFENDANT: It was a woman. I can't remember  
12 her name. I can't remember her name, but she taught  
13 history. I can't remember her name.

14          THE COURT: American history, world history? Do  
15 you remember what kind of history?

16          THE DEFENDANT: It was U.S. history.

17          THE COURT: And you enjoyed the class?

18          THE DEFENDANT: Yes, sir.

19          THE COURT: Did you learn a lot?

20          THE DEFENDANT: I didn't -- at that time I  
21 wasn't -- I wasn't trying to learn a lot, you know what I'm  
22 saying. When I was in history class --

23          THE COURT: My point is this, Mr. Brooks. Exactly  
24 what you just said. I understand your unfortunate  
25 circumstances. I didn't live through your unfortunate

1 circumstances, but I can read about them, and I understand  
2 them. But even without a family, even without a mother and  
3 a father, there was a teacher at Morehead who tried to teach  
4 you something that you could have used had you been willing  
5 to listen and do that, but you weren't ready. So what is it  
6 that makes you ready now?

7 THE DEFENDANT: Sometimes you've got to be in  
8 certain situations to understand.

9 THE COURT: And what is that situation?

10 THE DEFENDANT: Just being away from my family.  
11 If it's seven years, I know I don't want to go through this  
12 again, and I won't go through this again. I just ask -- I  
13 know when I do go to prison, I'll be able to better myself,  
14 and that's what I'm going to do. Whether it's 105 months,  
15 84 months, when I get out, I am going to do right, but I ask  
16 you --

17 THE COURT: And I'm not putting you down. I'm  
18 just making this point. You didn't do that when you had the  
19 chance at Eden Morehead High School, so what is going to  
20 make you do it now?

21 THE DEFENDANT: Because I know how to quit. My  
22 freedom can be taken away from me from doing the things I  
23 was doing. When you out there in that world, you don't  
24 think about being locked up for a long time, being away from  
25 your family. All you think about is your kids taking care

1 of, you helping who you live with, and that's what I did. I  
2 know it's not right, but I learned from my mistakes. 105  
3 months --

4 THE COURT: A mistake. Let me ask you this. When  
5 you were 19 years old, if somebody had done to your kids  
6 what you did to your cousin, what would your reaction to  
7 what they had done been?

8 THE DEFENDANT: If somebody did it to my kids?

9 THE COURT: Came in the house, held your kids at  
10 gunpoint, tied them up, and put them in the closet. You  
11 wouldn't be thinking of that as a mistake, would you?

12 THE DEFENDANT: Me personally -- you probably  
13 wouldn't believe me; but if that person came to talk to me  
14 and gave me an understanding of how he didn't know no  
15 better, I would believe him. Why? Because I've been  
16 through the same thing.

17 THE COURT: How he didn't know no better?

18 THE DEFENDANT: I mean --

19 THE COURT: How in the world could he possibly not  
20 know it was wrong to do something like that?

21 THE DEFENDANT: Your Honor, I mean, I knew it was  
22 wrong, but when I say didn't know any better, I mean you  
23 don't think about being taken away from your family. You  
24 just know what's going on, what you're doing is making some  
25 money, and it's at that point in time. You don't think

1 about getting away from your family. Now I'm in this  
2 predicament, I'm being took away from my family.

3 THE COURT: Because of what, Mr. Brooks?

4 THE DEFENDANT: Because --

5 THE COURT: Why are you being taken away?

6 THE DEFENDANT: I did something I shouldn't have  
7 did.

8 THE COURT: Who is responsible for that?

9 THE DEFENDANT: Me, and I -- you know what I'm  
10 saying, I accept -- you know what I'm saying, I know what I  
11 did, you know what I'm saying, was wrong. But my father got  
12 taken away from me at 10. Yeah, what he was doing was  
13 wrong, but he had his own concrete business, too. And I  
14 know he wouldn't have taught me the wrong that he was doing.  
15 He would have taught me how to lay concrete. If I knew how  
16 to do that, I would have laid concrete because that's what I  
17 knew how to do. If I had knew how to do it, I would have  
18 done it. If I had had somebody there to teach me how to be  
19 a man, I would have been a man, but I didn't.

20 Yeah, I lived with my brother. He was in the Air  
21 Force. He worked. I went to school. But at the same time,  
22 it was -- that was it. I come home, play the video game  
23 after school, that was it. He'd come home from work, he'd  
24 cook, we'd watch TV, and go to sleep. That was it. But I  
25 know my father could have taught me how to be a man.

1           I don't want to talk about them because I did what  
2 I did. It's is my fault, Your Honor. I really would  
3 appreciate it if I could get the 84 months. I'm going to  
4 better myself either way I go, 84 months or 105 months. I  
5 just hope that you understand what I'm saying. I done said  
6 mostly everything that was on my mind. I just put it up in  
7 God's hands.

8           THE COURT: I appreciate you talking to me,  
9 Mr. Brooks, and I think -- although I reach different  
10 conclusions from what you reach, I think I understand more  
11 about what you're saying than perhaps you would give me  
12 credit for, although we might not reach the same conclusion  
13 about what you're saying and what it means in terms of what  
14 type of sentence should be imposed.

15           To give you an example, you were previously  
16 convicted of a misdemeanor breaking and entering, a common  
17 law robbery, and an affray. I think in the affray you might  
18 have gotten 30 days or something. But no active sentences  
19 imposed for those priors, pretty much?

20           THE DEFENDANT: In the simple affray, that  
21 happened while I was in jail this time.

22           THE COURT: I'm not criticizing, I'm just pointing  
23 out what your prior sentences were. Suppose for that common  
24 law robbery instead of getting a probationary sentence, you  
25 had gotten a sentence of 24 months. And I'm not saying it

1 was right or wrong for you not to get it. Then it wouldn't  
2 catch you so much by surprise to be standing here in federal  
3 court facing 7 to 10. Maybe you would have gotten the  
4 message then.

5 If I go too high, I'm not being fair to you. But  
6 if I go too low, then you and others like you won't  
7 understand the seriousness of the conduct that you've  
8 engaged in. Do you understand that?

9 You don't have to comment on that, I'm just  
10 saying. I listened to you, and I'm hearing what you say,  
11 but I may reach different conclusions from which you think I  
12 ought to reach. Do you understand that?

13 THE DEFENDANT: (Nodding.)

14 THE COURT: In Mr. Brooks' case, it seems to me  
15 that a sentence within the advisory guideline range is  
16 sufficient but not greater than necessary. I am not going  
17 to the bottom of the guideline range. I will impose a  
18 sentence of 96 months in Mr. Brooks' case.

19 In fashioning that sentence, I do think, as  
20 Ms. Hairston rightfully pointed out, that given the conduct  
21 involved in this offense, there are probably some very  
22 rational, reasonable reasons to go above the guidelines to  
23 the 120-month maximum. I will not do that in this case.

24 Upon consideration of the advisory guideline  
25 calculation as well as all other factors set forth under



1 18 USC Section 3553, I will note in relation to those  
2 factors that in terms of the nature and circumstances of the  
3 offense, Mr. Brooks' conduct in this case, and that is the  
4 offense conduct in possessing the firearm during the course  
5 of a robbery as well as on the grounds at Eden Morehead High  
6 School after the robbery had been committed, certainly rises  
7 to what the Court considers to be the more, if not the most,  
8 serious level of an offense conduct underlying a 922(g)  
9 conviction.

10           Looking at the history and characteristics of the  
11 defendant, I do realize that the defendant has had very  
12 difficult circumstances as a young person. He's had some  
13 opportunities, though, that a lot of people don't have in  
14 terms of his half-brother and his grandmother and various  
15 other things. But, on the other hand, defendant was 19 at  
16 the time this offense was committed, and I do find that his  
17 age at the time of the offense in terms of immaturity and  
18 irresponsibility was a factor that mitigates against -- in  
19 some respects mitigates against the maximum sentence in this  
20 case. This is a serious offense, and the need to deter this  
21 type of criminal conduct as well as others similarly  
22 situated is very significant.

23           For those reasons, the Court finds that a sentence  
24 of 96 months followed by three years of supervised release  
25 is sufficient but not greater than necessary, and I will

1 impose that sentence on the terms -- with the supervised  
2 release on the terms and conditions set forth in the  
3 presentence report.

4 Mr. Dusenbury, anything further you want to  
5 address before I impose that sentence?

6 MR. DUSENBURY: Only in light of the Court's  
7 observations regarding the BOP recommendation, I wondered if  
8 the Court might consider including a recommendation that he  
9 be housed at a facility other than Butner as near as  
10 possible to his place of residence thinking of his family  
11 having access and being able to visit him.

12 THE COURT: I will recommend as close to his home  
13 as possible, and I will recommend him to a facility where he  
14 may participate in an intensive substance abuse treatment  
15 program.

16 It is not lost on me, Mr. Dusenbury, and it's part  
17 of the -- I think the defendant's -- I don't know if you  
18 want to say immaturity. That may be an overstatement. But  
19 one of the reasons I'm recommending Mr. Brooks to the  
20 facility where he can receive intensive substance abuse  
21 treatment is his acknowledged daily use of marijuana.

22 MR. DUSENBURY: Yes, sir.

23 THE COURT: That's not a free habit he's  
24 undertaking there, and to a certain degree to hear  
25 Mr. Brooks' concern over his children and his need to be

1 there for his children is offset by the conduct that he  
2 apparently chose to participate in while he had the  
3 opportunity to be there with his children. But I will  
4 recommend him for an intensive substance abuse treatment  
5 program.

6 In Case No. 1:10CR71-1, United States versus  
7 Darius Tremayne Brooks, as to Count One, it is hereby  
8 ordered that the defendant is committed to the custody of  
9 the Bureau of Prisons for a term of 96 months followed by  
10 three years of supervised release. A special assessment of  
11 \$100 is mandatory, is hereby imposed, and is due and payable  
12 immediately. A fine is waived because of the defendant's  
13 inability to pay, and restitution is not applicable in  
14 Mr. Brooks' case.

15 During the period of supervised release, it is  
16 ordered that the defendant shall comply with the standard  
17 terms and conditions of supervised release. In addition to  
18 the standard terms and conditions, the following special  
19 conditions are imposed:

20 One, the defendant shall provide any requested  
21 financial information to the probation officer.

22 Two, the defendant shall not incur new credit  
23 charges or open additional lines of credit without the  
24 approval of the probation officer.

25 Three, the defendant shall submit to substance

1 abuse testing at any time as directed by the probation  
2 officer. The defendant shall cooperatively participate in a  
3 substance abuse treatment program which may include drug  
4 testing and inpatient or residential treatment and pay for  
5 those treatment services as directed by the probation  
6 officer. During the course of any treatment, the defendant  
7 shall abstain from the use of any alcoholic beverages.

8           Mr. Brooks, you do have the right to appeal the  
9 sentence that I have imposed in this case. If you choose to  
10 appeal, notice of appeal must be filed within 14 days of the  
11 entry of any judgment. If you wish to appeal and cannot  
12 afford the services of counsel, counsel will be appointed to  
13 represent you at no additional cost to you. Mr. Dusenbury  
14 will be responsible for advising you with respect to your  
15 right to appeal and filing any notice of appeal if you  
16 should instruct him to do so.

17           Anything further, Mr. Dusenbury?

18           MR. DUSENBURY: No, Your Honor.

19           THE COURT: Ms. Hairston?

20           MS. HAIRSTON: Your Honor, we would move to  
21 dismiss Count Two pursuant to the plea agreement, and we  
22 would ask the Court for a destruction order if a lawful  
23 owner cannot be found.

24           THE COURT: I will order the destruction of the  
25 firearm at the conclusion of any appeals period if a lawful

1 owner cannot be reasonably located, and I will order the  
2 dismissal of Count Two pursuant to the terms of the plea  
3 agreement. Hold on one minute.

4 I will recommend to the Bureau of Prisons that the  
5 defendant be designated to a facility as close to his home  
6 as possible, and I will also recommend that the defendant be  
7 designated to a facility where he may participate in an  
8 intensive substance abuse treatment program.

9 Mr. Brooks, you are certainly free to disagree  
10 with me on this, as I may very well be wrong. But in spite  
11 of your comments that you did not want to blame anyone else  
12 for your predicament and were taking responsibility, I heard  
13 a lot of comments that suggest a deference to deflect blame  
14 for your conduct. And until you -- at least in my mind,  
15 until you hit that first point of moving forward like you  
16 talked about, accepting responsibility for what you've done  
17 and responsibility for those decisions, you're going to have  
18 a tough time. But some of what you said is exactly right,  
19 and you can do some good things if you will follow your own  
20 advice in some respects.

21 Anything further, Mr. Dusenbury?

22 MR. DUSENBURY: No, sir.

23 THE COURT: All right. Good luck to you both.  
24 We'll stand in recess until 2:30.

25 (At 10:43 a.m., break taken.)

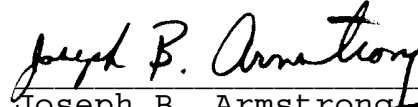
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C E R T I F I C A T E

I, JOSEPH B. ARMSTRONG, RMR, FCRR, United States  
District Court Reporter for the Middle District of North  
Carolina, DO HEREBY CERTIFY:

That the foregoing is a true and correct transcript of  
the proceedings had in the within-entitled action; that I  
reported the same in stenotype to the best of my ability;  
and thereafter reduced same to typewriting through the use  
of Computer-Aided Transcription.

Date: 04/08/11

  
\_\_\_\_\_  
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